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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

IN RE:

VICTOR ALEJANDRO SORIANO AKA
VICTOR ALENJANDRO SORIANO
FLORES AKA VICTOR A. SORIANO,

Debtor.

BK Case No. 23-12257-mkn
Chapter 11

**OBJECTION TO CONFIRMATION
OF DEBTOR'S PLAN OF
REORGANIZATION #3**

Subject Property
8660 Giles Street
Las Vegas, NV 89123

**OBJECTION TO CONFIRMATION OF DEBTOR'S PLAN OF
REORGANIZATION #3**

NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for The Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of the CWALT, Inc., Alternative Loan Trust 2007-OA3 Mortgage Pass-Through Certificates, Series 2007-OA3 ("Creditor"), a secured creditor in the above-captioned bankruptcy proceeding, hereby submits the following Objection to confirmation of Plan of Reorganization #3 (Docket No. 107, "Plan #3") proposed by Debtor in the above-captioned

1 action (the “Instant Bankruptcy”). This Objection is based on the authorities cited herein and
 2 on such additional submissions and argument as may be presented at or before the
 3 confirmation hearing.

4 **I. STATEMENT OF FACTS**

5 **A. Creditor’s Mortgage Loan and Proof of Claim**

6 Creditor’s claim is evidenced by a promissory note executed by Debtor and dated
 7 November 20, 2006, in the original principal sum of \$430,000.00 (the “Note”). *See*
 8 Amended Claim Number 8 on the Instant Bankruptcy Claims Register. The Note is secured
 9 by a deed of trust (the “Deed of Trust”) recorded in first position against the real property
 10 commonly known as 8660 Giles Street, Las Vegas, NV 89123 (the “Property”). *Id.* Creditor
 11 holds possession of the Note, which is indorsed in blank. *Id.* The beneficial interest in the
 12 Deed of Trust was also subsequently transferred to Creditor. *Id.*

13 In June 2008, Debtor executed a Loan Modification Agreement in which Debtor
 14 acknowledged the unpaid principal balance on the loan had increased to \$464,016.07 and
 15 pursuant to which the adjustable interest rate on the loan was altered. *Id.* In August 2009,
 16 Debtor executed a second Loan Modification Agreement in which he acknowledged the
 17 unpaid principal balance on the loan had increased to \$480,801.67 and pursuant to which the
 18 interest rate was again altered. *Id.* The Note, Deed of Trust, and two Loan Modification
 19 Agreements are collectively referred to hereafter as the “Loan.”

20 Creditor filed its Proof of Claim in the Instant Bankruptcy, which is secured by the
 21 Property, on August 11, 2023. *See* Initial Claim Number 8 on the Instant Bankruptcy
 22 Claims Register. Creditor later filed an amended Proof of Claim, secured by the Property,
 23 identifying a total claim of \$752,614.57, including pre-petition arrears of \$405,715.50.
 24 *See* Amended Claim Number 8 on the Instant Bankruptcy Claims Register. As of the
 25 filing of the Petition, Creditor had advanced more than \$51,000.00 for the payment of
 26 taxes and insurance on the Property. *Id.* The monthly payment due on the Loan was

1 \$2,885.08. *Id.* The Loan was contractually due for the August 1, 2011 payment, due more
 2 than twelve years ago, and Creditor had only received one payment from Debtor between
 3 November 21, 2019 and June 2, 2023 when the Instant Bankruptcy was filed. *Id.*

4 During the pendency of the Instant Bankruptcy, Debtor has continued to fail and
 5 refuse to make payments to Creditor and Creditor has advanced additional sums for the
 6 payment of real property taxes and insurance premiums on the Property. The escrow
 7 deficiency on the Loan now exceeds \$56,000.00 and Creditor estimates the total amount
 8 required to reinstate the Loan as of the filing of this Objection is \$434,566.93. Finally,
 9 Creditor estimates the total amount owed to Creditor as of the filing of this Objection is
 10 \$789,915.35.

11 **B. Debtor's Prior Bankruptcy Actions**

12 Since 2013, Debtor has filed a total of six bankruptcy cases and all five of the prior
 13 cases were dismissed due to Debtor's failure to comply with the Bankruptcy Code. First, on
 14 May 30, 2013, Debtor filed a joint voluntary petition for relief under Chapter 11 of the
 15 Bankruptcy Code and was assigned case number 13-14770 (the "First Bankruptcy").¹ The
 16 First Bankruptcy was dismissed on December 18, 2014 upon the U.S. Trustee's Motion
 17 to Dismiss due to Debtors' "failure to expeditiously prosecute the case as fiduciaries to
 18 their creditors". *See* First Bankruptcy Docket Numbers 39 and 43.

19 On January 29, 2016, Debtor filed another voluntary petition for relief under
 20 Chapter 11 of the Bankruptcy Code and was assigned case number 16-10429 (the "Second
 21 Bankruptcy"). Once again, the U.S. Trustee sought conversion or dismissal of the case
 22 and the Second Bankruptcy was ultimately dismissed on January 11, 2017. *See* Second
 23

24
 25 ¹ Pursuant to Rules 201(b) and 201(d) of the Federal Rules of Evidence, which are made
 26 applicable to this proceeding by Rule 9017 of the Federal Rules of Bankruptcy Procedure, Creditor requests that the Court take judicial notice of the papers and pleadings on file and part of the record in Debtor's prior bankruptcy actions and the Instant Bankruptcy.

1 Bankruptcy Docket Numbers 81 and 90.

2 Approximately two (2) months after the Second Bankruptcy was dismissed, on
3 March 27, 2017, Debtor filed another voluntary petition for relief under Chapter 11 of the
4 Bankruptcy Code and was assigned case number 17-11472 (the “Third Bankruptcy”). The
5 Third Bankruptcy was dismissed on August 19, 2019 upon the motion of Creditor. *See*
6 Third Bankruptcy Docket Numbers 85 and 91.

7 While the Third Bankruptcy case was still active and pending, on June 11, 2019,
8 Debtor filed yet another voluntary petition for relief under Chapter 11 of the Bankruptcy
9 Code and was assigned case number 19-13714 (the “Fourth Bankruptcy”). The Fourth
10 Bankruptcy was dismissed on February 24, 2020 upon the motion of Creditor. *See* Fourth
11 Bankruptcy Docket Numbers 26 and 100.

12 Finally, on January 31, 2023, Debtor filed yet another voluntary petition for relief,
13 this time under Chapter 13 of the Bankruptcy Code, and was assigned case number 23-10313
14 (the “Fifth Bankruptcy”). The Fifth Bankruptcy was dismissed on March 31, 2023 for failure
15 to file required documents under Section 521(i). *See* Fifth Bankruptcy Docket Numbers 12
16 and 13.

17 **C. The Instant Bankruptcy**

18 A little more than two months after the Fifth Bankruptcy was dismissed, on June 2,
19 2023, Debtor filed the bare bones Petition that initiated the Instant Bankruptcy. *See* Instant
20 Bankruptcy Docket Number 1. Debtor failed to file any schedules or financial disclosures
21 until June 16, 2023. *See* Instant Bankruptcy Docket Number 17.

22 On July 26, 2023, Debtor filed a Motion for an Order Allowing Use of Cash
23 Collateral and Establishing Adequate Protection Payments for Secured Creditors U.S. Bank
24 National Association and Shellpoint Mortgage Servicing (the “Motion to Use Cash
25 Collateral”). *See* Instant Bankruptcy Docket Number 28. The Motion to Use Cash Collateral
26 proposed Debtor would make monthly adequate protection payments to Creditor in the

1 amount of \$2,027.00. *Id.* On August 2, 2023, Debtor filed an initial Motion to Value
2 Collateral of Mortgage Loan Pursuant to §506(A) (the “Failed Motion to Value”), seeking
3 to value the Property at \$560,000.00 and bifurcate Creditor’s claim. *See* Instant
4 Bankruptcy Docket Number 31.

5 On August 16, 2023, Creditor filed its Opposition to the Failed Motion to Value
6 and established that Debtor had failed to satisfy his burden to demonstrate that the
7 Property should be valued at \$560,000.00 or that Creditor’s claim should be bifurcated.
8 *See* Instant Bankruptcy Docket Number 40. The same day Creditor filed its Opposition
9 to the Failed Motion to Value, Debtor filed an Application to Employ Realty One Group
10 to List Certain Real Property on a Commission Bases Pursuant to U.S.C. 327(a) and
11 328(a) and Federal Rules of Bankruptcy Procedure 2014 (Instant Bankruptcy Docket
12 Number 41, the “Application to Employ Realtor”). Attached to the Application to Employ
13 Realtor was a listing agreement executed in July 2023, pursuant to which Debtor and
14 Maribel Soriano agreed to list the Property for the price of \$798,888.00. *Id.* at 41-2, p. 3
15 of 21.

16 On August 30, 2023, the Court held an initial hearing on the Failed Motion to
17 Value. *See* Instant Bankruptcy Docket Number 48. During that hearing, the Court noted
18 Creditor opposed the Failed Motion to Value and continued the hearing so that Debtor
19 could provide some evidence the Property was not Debtor’s principal residence despite
20 the fact that the Property was Debtor’s residence during the Fifth Bankruptcy. The Court
21 set September 13, 2023 as the deadline for Debtor to file a supplement. The Court then
22 continued the hearing on the Failed Motion to Value to September 27, 2023.

23 Debtor failed to file any supplement to the Failed Motion to Value. *See generally,*
24 Instant Bankruptcy Docket. As a result, during the continued hearing on September 27,
25 2023, the Court denied the Failed Motion to Value. The Court also denied the Motion to
26 Use Cash Collateral during the September 27, 2023 hearing. The Orders denying the

1 Failed Motion to Value and Motion to Use Cash Collateral were entered on the Docket on
2 October 11, 2023. *See* Instant Bankruptcy Docket Numbers 67 and 68.

3 While the Failed Motion to Value was pending, on August 31, 2023, Debtor filed
4 an initial Plan of Reorganization for Small Business Under Chapter 11. *See* Instant
5 Bankruptcy Docket Number 49. On September 5, 2023, only a few days later, Debtor
6 filed Amended Plan of Reorganization #2 (Instant Bankruptcy Docket Number 50,
7 “Plan #2”). Creditor’s claim was classified as a secured claim in Class 2 and Debtor
8 proposed a cram down and bifurcation of the claim based upon the alleged valuation of
9 the Property at \$560,000.00. *Id.*

10 Also on September 5, 2023, Debtor filed an *Ex Parte* Motion for Order Re: Fixing
11 of Deadlines and Procedures (the “Procedures Motion”), in which Debtor requested the
12 Court set a hearing on confirmation of Plan #2 and deadlines related to objections to
13 confirmation and ballots. *See* Instant Bankruptcy Docket Number 51. On September 8,
14 2023, the Court entered its Order granting the Procedures Motion (the “Procedures
15 Order”). *See* Instant Bankruptcy Docket Number 52. The Procedures Order set the
16 deadline for Debtor to serve a solicitation package as “within five (5) business days of
17 entry of this Order,” or September 15, 2023. *Id.* The Procedures Order also set October
18 25, 2023 as the deadline to cast ballots and object to Plan #2. *Id.* Finally, the deadline for
19 Debtor to file a reply and ballot summary was set as November 3, 2023, and the
20 confirmation hearing on Plan #2 was set for November 8, 2023. *Id.*

21 On October 6, 2023, Debtor filed a Renewed Motion to Value Collateral of
22 Mortgage Loan Pursuant to §506(A) (the “Submitted Motion to Value”), seeking to value
23 the Property at \$605,000.00 and bifurcate Creditor’s claim based upon that valuation. *See*
24 Instant Bankruptcy Docket Number 60. Also on October 6, 2023, Debtor filed a Renewed
25 Motion to Use Cash Collateral (the “Renewed Motion to Use Cash Collateral”). *See*
26 Instant Bankruptcy Docket Number 62. The Renewed Motion to Use Cash Collateral

1 proposed Debtor would make monthly adequate protection payments to Creditor in the
2 amount of \$2,027.00. *Id.*

3 On October 10, 2023, Debtor filed a Stipulation among Debtor and the trustees to
4 continue the confirmation hearing and alter the deadlines related to Plan #2. *See* Instant
5 Bankruptcy Docket Number 65. On October 11, 2023, the Court entered its Order
6 approving that stipulation, which continued the confirmation hearing on Plan #2 to
7 November 28, 2023 and extended the deadline for objections to confirmation and casting
8 of ballots to November 14, 2023. *See* Instant Bankruptcy Docket Number 69.

9 On October 25, 2023, Creditor filed its Opposition to the Submitted Motion to
10 Value and established that Debtor had failed to satisfy his burden to demonstrate that the
11 Property should be valued at \$605,000.00 or that Creditor's claim should be bifurcated.
12 *See* Instant Bankruptcy Docket Number 79. On November 8, 2023, the Court conducted
13 an initial hearing on the Submitted Motion to Value, granted Debtor's request for yet
14 another continuance, and continued the hearing to November 28, 2023. *See* Instant
15 Bankruptcy Docket Number 85.

16 On November 14, 2023, Creditor timely filed a Notice of Rejection of Debtor's
17 Amended Plan of Reorganization #2 as well as an Objection to Confirmation of Debtor's
18 Amended Plan of Reorganization #2. *See* Instant Bankruptcy Docket Numbers 88 and 89.
19 On November 20, 2023, Debtor filed another Stipulation among Debtor and the trustees
20 to continue the confirmation hearing. *See* Instant Bankruptcy Docket Number 92. The
21 same day, the Court entered its Order approving the Stipulation, pursuant to which the
22 confirmation hearing on Plan #2 was continued to January 17, 2024. *See* Instant
23 Bankruptcy Docket Number 93.

24 On November 28, 2023, the Court heard oral argument on the Submitted Motion
25 to Value and took the matter under submission. As of the filing of this Objection, the
26 Court has not entered an order on the Submitted Motion to Value. *See generally* Instant

1 Bankruptcy Docket. On December 15, 2023, the Court entered its Order granting the
 2 Renewed Motion to Use Cash Collateral (the “Cash Collateral Order”) and Debtor became
 3 obligated to make the proposed monthly adequate protection payments of \$2,027.00 to
 4 Creditor. *See* Instant Bankruptcy Docket Number 102.

5 On January 5, 2024, Debtor filed yet another Stipulation among Debtor and the
 6 trustees to continue the confirmation hearing on Plan #2. *See* Instant Bankruptcy Docket
 7 Number 104. The same day, the Court entered its Order approving the Stipulation,
 8 pursuant to which the confirmation hearing on Plan #2 was continued to February 14,
 9 2024. *See* Instant Bankruptcy Docket Number 105. On January 17, 2024, Debtor filed
 10 Plan #3 despite the fact that Plan #2 was still pending before the Court and the
 11 confirmation hearing on Plan #2 was scheduled for February 14, 2024. *See* Instant
 12 Bankruptcy Docket Number 107. Creditor’s claim is treated in Class 2, but Plan #3
 13 contains conflicting statements regarding the claim and it is therefore unclear how Debtor
 14 proposes to treat Creditor’s claim. *Id.* Section 2.02 states that Creditor has a claim “to
 15 the extent allowed as a secured claim under § 506(a) of the Code.” *Id.* However, Section
 16 4.01 states,

17 *The Claim of Bank of New York Mellon shall be unimpaired in compliance*
 18 *with §1128(b)(5) and the Debtor shall immediately list the collateral for*
 19 *sale for an amount that will satisfy Bank of New York Mellon’s claim in its*
 20 *entirety, within a period of not more than six months. Adequate protection*
 21 *payments, pursuant to the Court’s order [ECF 102], shall continue until the*
 22 *sale and payoff of the property.*

23 *Id.*

24 On January 31, 2024, the Court held a status hearing in this case. *See* Instant
 25 Bankruptcy Docket Number 109. During the status hearing, Debtor’s counsel requested
 26 leave to conduct a confirmation hearing on Plan #3 rather than Plan #2 on February 14,
 2024. Counsel for Creditor objected to the request and the Court continued the
 confirmation hearing and status hearing to March 20, 2024. *See* Instant Bankruptcy

1 Docket Number 109. On February 1, 2024, Debtor filed a Notice of Continuance of
2 Confirmation Hearing, which gave notice the confirmation hearing on Plan #3 would be
3 held on March 20, 2024, identified the last day to submit ballots as February 7, 2024, and
4 identified the deadline to object to confirmation as March 6, 2023. *See* Instant Bankruptcy
5 Docket Number 110.

6 On February 5, 2024, the Court entered an Order setting the confirmation hearing
7 on Plan #3 for March 20, 2024. *See* Instant Bankruptcy Docket Number 112. The
8 deadline to cast ballots was set as February 7, 2024 and the deadline to file objections to
9 confirmation as March 6, 2024. *Id.* Debtor's deadline to file a ballot summary was set as
10 March 13, 2024. *Id.* However, the Order did not identify the deadline by which Debtor
11 was required to serve solicitation packages related to Plan #3 on interested parties. *Id.*

12 Also on February 5, 2023, Debtor filed a Certificate of Service, which stated that
13 Debtor had served Plan #3 and Debtor's Notice of Continuance of Confirmation Hearing
14 on various interested parties. *See* Instant Bankruptcy Docket Number 113. However,
15 Debtor did not include the Court's Order setting the confirmation hearing and deadlines
16 related to Plan #3. *Id.*

17 On February 7, 2024, the deadline to cast ballots on Plan #3, Creditor filed a Notice
18 of Creditor's Rejection of Debtor's Amended Plan of Reorganization #3. *See* Instant
19 Bankruptcy Docket Number 115. Creditor filed the notice because Creditor did not
20 receive a solicitation package or ballot from Debtor prior to the deadline to cast a ballot.
21 *Id.* On February 12, 2024, Debtor filed four Certificates of Service related to ballots. *See*
22 Instant Bankruptcy Docket Numbers 116, 117, 118, 119. Each Certificate of Service
23 stated that a ballot was mailed "via First Class United States Mail, postage prepaid, with
24 sufficient postage thereon to the parties listed on the mailing matrix exhibit, a copy of
25 which is attached hereto." *See e.g.* Instant Bankruptcy Docket Number 118. Each
26 Certificate of Service also stated that the subject ballot was mailed on February 6, 2024,

1 the day before parties were required to cast ballots. *Id.* However, the Certificate of
 2 Service for the Class 2 Ballot did not include any exhibit identifying the parties or
 3 addresses to which the ballot was mailed. *Id.* As of the filing of this Objection,
 4 undersigned counsel for Creditor, the holder of the claim treated in Class 2, has not
 5 received a ballot and Debtor has failed to file any proof of service of the Class 2 ballot on
 6 any party.

7 On February 21, 2024, Debtor filed a Second Renewed Motion to Value Collateral
 8 Pursuant to §506(A) (Instant Bankruptcy Docket Number 121, the “Third Motion to
 9 Value”) concerning the Property. Contrary to the Failed Motion to Value and Submitted
 10 Motion to Value, in this third iteration of the motion, Debtor admits Creditor’s claim
 11 cannot be modified because it is secured by Debtor’s principal residence. *Id.* at 2:7-9.
 12 However, the Third Motion to Value states “[t]he value of the Property is anywhere
 13 between \$560,000.00 and \$605,0000.00” and requests that the Court strip the Internal
 14 Revenue Service’s purportedly wholly unsecured lien from the Property. *Id.* at 2:4-5 and
 15 3:13-14. Although Debtor directed the Court to appraisals previously offered in support
 16 of other motions, Debtor failed to include any evidence or a supporting declaration with
 17 the Third Motion to Value. *See* Instant Bankruptcy Docket Number 121.

18 Creditor now objects to Confirmation of Plan #3 as proposed by Debtor.

19 **II. ARGUMENT**

20 **A. DEBTOR BEARS THE BURDEN TO SHOW PLAN #3 SHOULD BE 21 CONFIRMED**

22 The provisions of 11 “U.S.C.” § 1191 set forth the requirements for the Court to
 23 confirm a small business plan under Subchapter V of Chapter 11 of the Bankruptcy Code.
 24 The burden is on the debtor to demonstrate that the plan meets the conditions essential for
 25 confirmation by a preponderance of the evidence. *In re Ambanc LaMesa Ltd. P’ship*, 115
 26 F.3d 650, 653 (9th Cir. 1997). For the reasons detailed herein, Debtor fails to meet this
 burden.

1 **B. DEBTOR'S INCONSISTENT POSITIONS IN THIS ACTION MAKE IT**
2 **IMPOSSIBLE TO DETERMINE THE TREATMENT OF CREDITOR'S**
3 **CLAIM**

4 Throughout the pendency of this action, Debtor has maintained, and continues to
5 maintain, inconsistent positions regarding Creditor's claim and the valuation of the
6 Property securing that claim. In the Failed Motion to Value, Debtor first tried to bifurcate
7 Creditor's claim based upon a valuation of \$560,000.00 despite ample evidence that
8 Debtor resided at the Property when this action was filed. Debtor then filed the Submitted
9 Motion to Value and tried to adopt an appraisal of \$605,000.00 as of February 2023, which
10 was completed by an appraiser who was denied access to a portion of the Property. And
11 Debtor again sought to bifurcate Creditor's claim based upon the purported valuation of
12 \$650,000.00.

13 In the Third Motion to Value, Debtor is now asking the Court to value the Property
14 at an unidentified number somewhere between \$560,000.00 and \$605,000.00 and strip the
15 lien of the Internal Revenue Service, which is secured by the Property. *See* Instant
16 Bankruptcy Docket Number 121. Debtor now acknowledges that Creditor's claim cannot
17 be modified pursuant to 11 U.S.C. § 1123(b)(5), which prohibits the modification of "a
18 claim secured only by a security interest in real property that is the debtor's principal
19 residence." *Id.* However, the Third Motion to Value is not supported by any evidence
20 and Creditor has previously identified the deficiencies of the appraisals upon which
21 Debtor attempts to rely. More important, although he acknowledges the Submitted
22 Motion to Value remains under submission, Debtor fails to address the procedural
23 irregularities created by the filing of yet another motion concerning the same topic and
24 issues, in which Debtor has taken a position that is diametrically opposed to the position
25 he took in the Submitted Motion to Value.

26 Debtor has not sought leave to withdraw the Submitted Motion to Value and, as
such, although Creditor believes that motion should not be granted, it remains possible the

1 Court could enter an order granting Debtor relief to which Debtor now admits he is not
2 entitled. The confirmation hearing on Plan #3 will take place in two weeks; yet, Debtor's
3 various filings have created confusion and unnecessarily increased the proceedings in this
4 action.

5 Debtor's inconsistent positions are also evidenced in Plan #3 itself and the
6 proposed treatment of Creditor's claim is therefore unclear. The classification of
7 Creditor's claim describes the claim as a secured claim "to the extent allowed as a secured
8 claim under § 506(a) of the Code." *See* Instant Bankruptcy Docket Number 107, § 2.02.²
9 The secured claim of the other creditor holding a mortgage on real property of the estate
10 is described as "[t]he secured claim of U.S. Bank National Association." *Id.*, § 2.03.
11 Therefore, Plan #3 arguably still seeks to reduce Creditor's claim based upon Debtor's
12 requested valuation of the Property at \$605,000.00. The description of Creditor's claim
13 does nothing to resolve the confusion created by the various motions to value filed by
14 Debtor.

15 The proposed treatment of Creditor's claim is similarly confusing. Plan #3
16 describes the claim as "unimpaired in compliance with § 1128(b)(5)" and proposes Debtor
17 will list the Property for sale and make monthly payments of \$2,027.00 to Creditor until
18 such time as the Property sells. *See* Instant Bankruptcy Docket Number 107, § 4.01. The
19 remaining language in the proposed treatment may suggest that Creditor's claim will be
20 paid in full upon the sale of the Property because the listing price will be required to be in
21 an amount sufficient to pay Creditor's claim "in its entirety." *Id.* However, the language
22 of the proposed treatment is too vague and ambiguous to determine whether Debtor is
23 actually proposing to pay Creditor's claim in full through a sale of the Property. Plan #3's
24 treatment of Creditor's claim is unclear and reflects the inconsistent positions taken by

25
26 ² Plan #2 included an identical description of the claim. *See* Instant Bankruptcy Docket
Number 50, § 2.02.

Debtor in this action.

Creditor has an allowed secured claim and Debtor failed to establish any basis upon which to reduce the amount of that claim. 11 U.S.C. § 501(a) provides that a creditor may file a proof of claim in a bankruptcy action. Further, 11 U.S.C. § 502(a) provides that a proof of claim filed under Section 501 “is deemed allowed, unless a party in interest...objects.” Finally, Rule 3001(f) of the Federal Rules of Bankruptcy Procedure (“FRBP”) provides that a proof of claim executed and filed in accordance with the applicable rules “shall constitute prima facie evidence of the validity and amount of the claim.” *See also Diamant v. Kasparian (In re So. Cal. Plastics, Inc.)* (9th Cir. 1999) 165 F.3d 1243, 1247-48); *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620-621 (9th Cir. BAP 2000) (citing Fed. R. Bankr. P. 3001(f)).

Creditor’s filed Proof of Claim complies with all applicable rules and, therefore, is prima facie evidence of the amount and validity of Creditor’s claim. *See* Claim Number 8-2 on the Instant Bankruptcy Claims Register. Yet, Debtor now proposes to make a monthly payment of only \$2,027.00 while attempting to sell the Property. Creditor is certainly not willing to forgive any portion of the debt. And Debtor has not demonstrated any basis upon which the Court should permit Debtor to continue to delay Creditor’s enforcement of its rights under the Loan documents and state law. The Court should refuse to confirm Plan #3.

C. CREDITOR’S CLAIM IS IMPAIRED UNDER PLAN #3

Plan #3 describes Creditor’s claim as “unimpaired;” however, the proposed treatment of the claim alters the rights of Creditor and therefore impairs Creditor’s claim. 11 U.S.C. § 1124(1) creates two standards to determine whether a claim is impaired under a proposed plan of reorganization. First, if the plan does not alter the “legal, equitable, and contractual rights” of the holder of the claim, the claim is unimpaired. 11 U.S.C. § 1124(1). In the alternative, the plan may cure the debtor’s default by paying all

1 arrearages, reinstate the maturity of the claim, compensate the holder of the claim for any
 2 damages incurred, and “not otherwise alter the legal, equitable, or contractual rights to
 3 which such claim or interest entitles the holder of such claim or interest.” 11 U.S.C. §
 4 1124(2). As one court has stated, “[i]mpairment is a term of art, extending beyond a
 5 worsening of a creditor’s position to include virtually any alteration of the rights of
 6 interested parties beyond those specifically designated in § 1124 as not affecting
 7 impairment.” *In re Reuter*, 427 B.R. 727, 773-74 (Bankr. W.D. Mo. 2010) (citing *In re L*
 8 *& J Anaheim Assoc.*, 995 F.2d 940 (9th Cir. 1993).

9 Creditor’s Loan was due for the August 1, 2011 payment when the Instant
 10 Bankruptcy was filed and Debtor owed Creditor more than \$405,000.00 in pre-petition
 11 arrears. *See* Proof of Claim 8-2 on the Instant Bankruptcy Claims Register. Therefore,
 12 there was a significant pre-petition default on the Loan. In addition, Debtor has not made
 13 any payments to Creditor since the Instant Bankruptcy was filed. *See generally* Monthly
 14 Operating Reports³. Yet, Plan #3 proposes that Debtor will list the Property for sale and
 15 make monthly payments of \$2,027.00 (rather than the \$2,885.08 amount identified in the
 16 Proof of Claim) until the Property sells. *See* Instant Bankruptcy Docket Number 107, §
 17 4.01 and Claim Number 8-2 on the Instant Bankruptcy Claims Register. It appears Debtor
 18 will have a six-month period within which to sell the Property. *See* Instant Bankruptcy
 19 Docket Number 107 § 4.01. However, Plan #3 does not state that Creditor’s claim will
 20 be paid in full from any proceeds of such a sale. *Id.* Plan #3 also fails to provide for the
 21 cure of the significant default on the Loan upon the effective date of Plan #3. *Id.* Finally,

22
 23 ³ Debtor’s Monthly Operating Reports are available on the Docket of the Instant
 24 Bankruptcy as follows: Period ending July 31, 2023, Docket Number 45; Period ending
 25 August 31, 2023, Docket Number 56; Period ending June 30, 2023, Docket Number 57;
 26 Period ending September 30, 2023, Docket Number 81; Period ending October 2023,
 Docket Number 90; Period ending November 30, 2023, Docket Number 103; Period
 ending December 31, 2023, Docket Number 108; Period ending January 31, 2024,
 Docket Number 120.

1 it fails to provide for any treatment of the claim in the event the Property does not sell
2 within six months or at all. *Id.* Plan #3 alters Creditor's rights under the Loan documents
3 and Nevada law by failing to reinstate the Loan or pay it in full on the effective date of
4 Plan #3. Therefore, Creditor's claim is impaired and Creditor was entitled to cast a ballot
5 rejecting Plan #3.

6 **D. PLAN #3 DOES NOT SATISFY THE BEST INTERESTS OF CREDITORS**
7 **TEST**

8 Plan #3 cannot be confirmed because it does not satisfy the best interest of
9 creditors test, which requires that each impaired creditor either accept the proposed plan
10 or "receive or retain under the plan on account of such claim or interest property of a
11 value, as of the effective date of the plan, that is not less than the amount that such creditor
12 would receive or retain if the debtor were liquidated under chapter 7 of [the code] on such
13 date." 11 U.S.C. § 1127(a)(7)(ii). Debtor bears the burden of providing competent,
14 reliable evidence that Plan #3 is in the best interests of Creditor and any other creditor that
15 does not vote to accept Plan #3.

16 To show that Creditor will receive under Plan #3 at least as much as Creditor would
17 receive in a Chapter 7 liquidation, Debtor must perform a liquidation analysis that is based
18 upon evidence. *In re MCorp. Fin. Inc.*, 137 B.R. 219, 228 (Bankr. S.D. Tex. 1992). Here,
19 Debtor attached a "Liquidation Summary" to Plan #3. *See* Instant Bankruptcy Docket
20 Number 107. However, there is no actual analysis included in that summary. *Id.* And
21 Debtor has failed to identify the evidence that supports either the total property value or
22 the amount of the claims secured by property of the estate. *Id.* Debtor has not filed any
23 motion to value the real property located at 62 East Ford Avenue and the valuation of the
24 Property securing Creditor's claim is the subject of two different motions pending in this
25 case. As such, Debtor has not proved up the value of the real properties he owns and the
26 purported liquidation analysis is deficient.

1 More important, Debtor is proposing that Creditor will receive partial monthly
 2 payments of only \$2,027.00 while Debtor attempts to sell the Property following
 3 confirmation of Plan #3. *See* Instant Bankruptcy Docket Number 107. Debtor may be
 4 required to sell the Property within six months of confirmation and may be required to
 5 pay Creditor's claim in full upon the sale, but the language of Plan #3 is vague and
 6 ambiguous. *Id.* Even if Plan #3 clearly set a six-month deadline for Debtor to sell the
 7 Property and pay Creditor in full pursuant to the terms of the Note and Deed of Trust, such
 8 a provision would not satisfy the best interests of creditors test because Plan #3 is
 9 proposing a slow motion liquidation.

10 In a Chapter 7 case, the trustee would move quickly and efficiently to liquidate the
 11 assets of the debtor and pay creditors from the proceeds. In contrast to that scenario,
 12 Debtor obtained leave to retain a realtor to sell the Property on September 22, 2023, more
 13 than five months ago. *See* Instant Bankruptcy Docket Number 55. And Plan #3 appears
 14 to be proposing that Debtor be given an additional six months to sell the Property. *See*
 15 Instant Bankruptcy Docket Number 107. Yet, Debtor is not proposing to compensate
 16 Creditor for the delay in payment. Creditor would receive more in a liquidation under
 17 Chapter 7 than what Debtor proposes in Plan #3. Therefore, the proposed plan does not
 18 satisfy the best interests of creditors test and the Court should deny confirmation of
 19 Plan #3.

20 **E. PLAN #3 IS NOT FEASIBLE AND HAS NOT BEEN PROPOSED IN GOOD**
 21 **FAITH**

22 Pursuant to 11 U.S.C. § 1191(c)(3), a court shall not confirm a Subchapter V plan
 23 unless the “debtor will be able to make all payments under the plan” or there is a
 24 reasonable likelihood the debtor will be able to make all payments under the plan and the
 25 plan provides appropriate remedies to protect holders of claims in the event payments are
 26 not made. In addition, pursuant to 11 U.S.C. § 1129(a)(11), a court may confirm a plan
 only if “[c]onfirmation...is not likely to be followed by liquidation or the need for further

1 financial reorganization of the debtor...unless such further...reorganization is proposed
2 in the plan.” As one court has stated, “[t]he test is whether the things which are to be done
3 after confirmation are only visionary promises. The test is whether the things which are
4 to be done after confirmation can be done as a practical matter under the facts.” *In re*
5 *Bergman*, 585 F.2d 1171, 1179 (2nd Cir. 1978). Under 11 U.S.C. § 1129(b)(3), the Court
6 may only confirm a plan if it has been “proposed in good faith and not by any means
7 forbidden by law.” Where a proposed plan lacks an adequate means of implementation,
8 the plan has not been proposed in good faith. *In re Walker*, 165 B.R. 994, 1003 (Bankr.
9 E.D. Va. 1994). Here, as detailed below, Plan #3 fails to satisfy any of these requirements.

10 First, Plan #3 fails to identify any source of the payments that are to be made
11 pursuant to Plan #3 because Debtor has once again failed to complete Article 1 of the
12 official form for small business debtor plans of reorganization in full. *See* Instant
13 Bankruptcy Docket Number 107, Article 1. The form includes language directing a debtor
14 to “[s]pecify sources of payment, such as infusion of capital, loan proceeds, sale of assets,
15 cash flow from operations, or future income.” *Id.* However, Debtor has chosen to leave
16 those instructions in Plan #3 rather than replace them with the required information as
17 directed. *Id.* Because Debtor has failed to identify the source of payments to be made
18 under Plan #3, it cannot be confirmed.

19 Further, the purported Liquidation Summary attached to Plan #3 fails to provide
20 sufficient information to demonstrate that Plan #3 is feasible or should be confirmed. *See*
21 Instant Bankruptcy Docket Number 107. Rather, the Liquidation Summary still relies
22 upon Debtor’s previously-proposed valuation of the Property at only \$560,000.00. *Id.* In
23 addition, Debtor has not provided any financial projections with Plan #3 despite proposing
24 that he will make monthly payments to Creditor and the other holder of a mortgage secured
25 by real property of the estate for some time after confirmation. *Id.* Even if Debtor had
26 offered financial projections, they would likely be unreliable as evidenced by Debtor’s

1 filed Monthly Operating Reports. None of the Monthly Operating Reports has accurately
2 predicted the next month's projected net cash flow. *See generally* Monthly Operating
3 Reports. For example, the Monthly Operating Report for the period ending October 31,
4 2023 predicted that Debtor's net income in November 2023 would be \$4,500.00. *See*
5 Instant Bankruptcy Docket Number 90 at 3. However, Debtor reported an actual net
6 income in November 2023 of only \$1,486.53. *See* Instant Bankruptcy Docket Number
7 103 at 2.

8 The Monthly Operating Reports also demonstrate that Debtor has not made any
9 payments to any creditors during the pendency of the Instant Bankruptcy. *See generally*
10 Monthly Operating Reports. The Court did not enter the Cash Collateral Order until
11 December 15, 2023. *See* Instant Bankruptcy Docket Number 102. However, Debtor first
12 requested leave to use his creditors' cash collateral and make adequate protection
13 payments to them in July 2023 when he filed the Motion to Use Cash Collateral. *See*
14 Instant Bankruptcy Docket Number 28. And he renewed his request to use the cash
15 collateral and make adequate protection payments in October 2023. *See* Instant
16 Bankruptcy Docket Number 62. Yet, as of the filing of this Objection, Debtor has failed
17 and refused to commence making monthly payments to the two creditors identified in the
18 Renewed Motion to Use Cash Collateral.

19 Because Debtor has failed and refused to make any payments to creditors during
20 the pendency of this action, the financial information included in the Monthly Operating
21 Reports is misleading and does not accurately reflect the state of Debtor's financial affairs.
22 According to Debtor's reporting, he has had an average net monthly income of \$6,281.53
23 during the pendency of the Instant Bankruptcy.⁴ However, Debtor was failing to make
24 monthly payments on secured loans in the amount of \$2,885.08 (*see* Proof of Claim 8-2

25
26 ⁴ This sum results from totaling the "Net cash flow" amounts reported on page 2 and
dividing by the seven months for which data has been reported.

1 on the Instant Bankruptcy Claims Register) and \$2,831.51 (*see* Proof of Claim 5 on the
2 Instant Bankruptcy Claims Register). Subtracting those payments from Debtor's reported
3 net cash flow amounts provides a much more accurate assessment of Debtor's operations
4 and reveals that Debtor's net income during the Instant Bankruptcy has only averaged
5 \$582.74 per month.

6 Plan #3 also fails to satisfy 11 U.S.C. § 1191(c)(3) because Plan #3 does not
7 include any remedies for creditors in the highly likely event that Debtor fails to make the
8 payments required under Plan #3. Debtor has not submitted sufficient information to
9 demonstrate that confirmation of Plan #3 will not be followed by a further reorganization
10 or liquidation and Debtor has not carried his burden to demonstrate the plan is feasible or
11 proposed in good faith. As such, the Court should deny confirmation of Plan #3.

12 **F. DEBTOR HAS FAILED TO COMPLY WITH THE DUTIES OF A**
13 **DEBTOR IN POSSESSION**

14 Debtor has failed to comply with his obligations under the Bankruptcy Code in a
15 number of ways. First, Debtor has failed to file timely monthly operating reports and has
16 failed to attach sufficient information to some of the reports. *See e.g.* Instant Bankruptcy
17 Docket Numbers 45 (no bank statements or cancelled checks attached); 56 (no cancelled
18 checks attached); 57 (filed more than two months late); 81 (filed after deadline); 120 (no
19 cancelled checks attached).

20 Second, Debtor has failed and refused to make the payments required by the Cash
21 Collateral Order. As shown by the filed Monthly Operating Reports, Debtor has not made
22 any payments to any creditors identified in the Schedules since the Instant Bankruptcy
23 was filed. *See generally* Monthly Operating Reports.

24 Finally, Debtor has been making regular payments to persons, including his non-
25 filing spouse Maribel Soriano and another apparent family member, Stephanie Soriano,
26 without obtaining Court approval to employ or pay those persons. Debtor's schedules and
other financial disclosures did not identify any employees of Debtor. *See* Instant

1 Bankruptcy Docket Number 17. Moreover, Debtor did not file any “first day motions”
 2 seeking authorization to continue to pay employees or other routine business expenses.
 3 *See generally* Docket. 11 U.S.C. § 327(a) permits trustees to retain various professionals
 4 to assist them in their duties. And 11 U.S.C. § 1107 permits a debtor in possession to do
 5 the same. Pursuant to 11 U.S.C. § 330(a), the Court may award reasonable compensation
 6 to such professionals after notice and a hearing.

7 In this case, Debtor has filed only two motions to employ professionals – one
 8 concerned the employment of Debtor’s counsel and the other concerned the employment
 9 of a realtor. *See* Instant Bankruptcy Docket Numbers 25 and 41. Debtor has never sought
 10 Court approval to retain Maribel Soriano or Stephanie Soriano to provide any services to
 11 Debtor. *See generally* Instant Bankruptcy Docket. Yet, Debtor has paid Maribel Soriano
 12 a total of \$14,000.00 during the course of this action. *See* Instant Bankruptcy Docket
 13 Numbers 45 at 6; 56-1 at 4; 90 at 15; 103 at 6; and 108 at 8. And Debtor has paid Stephanie
 14 Soriano a total of \$3,250.00 during the case. *See* Instant Bankruptcy Docket Numbers 57-
 15 3 at 7; 56-1 at 4; 90 at 15; 108 at 8; and 120 at 6. Without Court approval, Debtor has
 16 paid family members a significant amount of money while paying creditors nothing in
 17 violation of his duties as a debtor in possession. The Court cannot confirm Plan #3 where
 18 Debtor has failed to demonstrate his compliance with the Bankruptcy Code.

19 **G. DEBTOR FAILED TO SOLICIT BALLOTS PROPERLY**

20 The Procedures Order required Debtor to serve the solicitation package for Plan #2
 21 within five business days of the entry of that order. *See* Instant Bankruptcy Docket
 22 Number 52. However, the Order setting the confirmation hearing on Plan #3 did not set
 23 a deadline for Debtor to serve a related solicitation package. *See* Instant Bankruptcy
 24 Docket Number 112. Yet, it set February 7, 2024 as the deadline for Debtor’s counsel to
 25 receive executed ballots on Plan #3. *Id.* Debtor did not serve an actual solicitation
 26 package for Plan #3. Rather, on February 1, 2024, Debtor served Plan #3 and Debtor’s

1 purported Notice of the confirmation hearing on Plan #3. *See* Instant Bankruptcy Docket
2 Number 113. Debtor did not serve a copy of the Court's Order actually setting the
3 confirmation hearing and deadlines related to Plan #3 at that time. *Id.* Rather, it appears
4 that Debtor never gave notice of entry of the Order setting the confirmation hearing and
5 deadlines for Plan #3 and Debtor never served a copy of that Order on any party. *See*
6 *generally* Instant Bankruptcy Docket.

7 Having failed to serve a solicitation package, Debtor made matters worse by
8 mailing ballots to creditors under separate cover and with no apparent context. *See* Instant
9 Bankruptcy Docket Numbers 116, 117, 118, and 119. Debtor did not attach a proposed
10 ballot to the Procedures Motion. *See* Instant Bankruptcy Docket Number 51. In addition,
11 undersigned counsel for Creditor never received a ballot. Therefore, it is impossible to
12 determine whether the ballot included sufficient information to permit creditors to
13 understand what the document was. It is clear that Debtor failed to serve any ballots until
14 February 6, 2024, the day before executed ballots were required to be delivered to
15 Debtor's counsel. *See* Instant Bankruptcy Docket Numbers 116, 117, 118, and 119.

16 And, when Debtor finally served a ballot, he sent it via first class mail only. *Id.*
17 The timing and method of service of the ballot was not reasonable under the
18 circumstances. Rather, Debtor's actions virtually assured no creditor would be able to
19 deliver an executed ballot to Debtor's counsel by the February 7, 2024 deadline to do so.
20 Further, Creditor's counsel never received a ballot and Debtor still has not filed any
21 evidence that the solicitation package for Plan #3 was served on Creditor. *See* Instant
22 Bankruptcy Docket Number 118. The solicitation of votes on Plan #3 was flawed and,
23 therefore, the Court cannot confirm Plan #3.

24 WHEREFORE, Creditor prays as follows:

- 25 1. That the Court deny confirmation of Plan #3;
- 26 2. For attorney's fees and costs incurred herein;

1 3. For such other and further relief as this Court deems just and proper.

2 DATED this 6th day of March, 2024.

3
4 **TIFFANY & BOSCO, P.A.**

5 By /s/ Regina A. Habermas, Esq. _____

6 **REGINA A. HABERMAS, ESQ.**

7 Attorney for Secured Creditor

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE:

VICTOR ALEJANDRO SORIANO AKA
VICTOR ALENJANDRO SORIANO
FLORES AKA VICTOR A. SORIANO,

Debtor,

BK Case No.: 23-12257-mkn

Chapter 11

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

1. On this 6th day of March, 2024, I served the following documents:

**OBJECTION TO CONFIRMATION OF DEBTOR'S PLAN OF
REORGANIZATION #3**

2. I caused to be served the above-named document by the following means to the persons as listed below:

X a. ECF System

Seth D Ballstaedt
help@bkvegas.com
Attorney for Debtor

1 Timothy W Nelson
2 tnelson@encpas.com
Trustee

3 U.S. Trustee – LV – 11
4 USTPRegion17.lv.ecf@usdoj.gov
U.S. Trustee

5 Justin Charles Valencia
6 justin.c.valencia@usdoj.gov
7 Attorney for U.S. Trustee

8 **I declare under penalty of perjury the foregoing is true and correct.**

9 DATED this 6th day of March, 2024.

10 By: /s/Regina A. Habermas
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